

## **SUBCHAPTER C : PERMIT ISSUANCES, REVISIONS, REOPENINGS, AND RENEWALS**

### **PERMIT ISSUANCE**

#### **§122.201. Permits.**

(a) A federal operating permit may be issued by the Texas Natural Resource Conservation Commission (TNRCC or Commission) or its designee only if all of the following conditions have been met:

- (1) the TNRCC has received a complete permit application;
  - (2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter (relating to Permit Requirements);
  - (3) the requirements for notifying and responding to affected states under Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition) have been satisfied;
  - (4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and
  - (5) the United States Environmental Protection Agency (EPA) has received a copy of the proposed permit, any notices required, and has not objected to issuance of the proposed federal operating permit within the time period specified for the EPA review in Subchapter D of this chapter.
- (b) All initial federal operating permits, and all subsequently issued or renewed permits, shall be issued by the Commission or its designee with terms not to exceed five years from the issuance of the proposed permit.
- (c) Final action by the Commission or its designee on an application for a federal operating permit shall be the issuance or denial of the proposed permit as provided in Subchapter D of this chapter.
- (d) The Commission or its designee may issue more than one federal operating permit at a site.
- (e) General permits shall not be required to meet the requirements of this section.
- (f) Except as otherwise provided in §122.138 of this title (relating to Application Shield), the owner or operator of a site which satisfies the criteria of §122.120 of this title (relating to Applicability) shall not operate such site unless the owner or operator has obtained the authority to do so under this chapter.

**§122.202. General Permits.**

(a) The Texas Natural Resource Conservation Commission (TNRCC or Commission) may adopt a general permit covering numerous similar stationary sources if the following conditions are satisfied:

(1) the conditions of the general permit provide for compliance with all applicable requirements and the requirements of this chapter;

(2) the United States Environmental Protection Agency is provided the opportunity to object and an affected state(s) is provided the opportunity to comment on the general permit prior to its final adoption pursuant to paragraph (3) of this subsection; and

(3) adoption of the general permit complies with the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6253-13a).

(b) After adoption of a general permit, such permit shall be listed in the General Permit List. Pursuant to the Texas Health and Safety Code, §382.051(b), the permit listed in the General Permit List as filed in the Secretary of State's Office and herein adopted by reference, satisfies the permit requirements of the Texas Health and Safety Code, §382.054.

(c) Each general permit shall identify the terms and conditions with which stationary sources shall comply.

(d) Owners or operators of stationary sources that would qualify for a general permit may apply to the Commission or its designee for approval under the terms and conditions of the general permit. Those owners or operators of stationary sources that apply for a general permit in accordance with this section shall satisfy the requirements of Subchapter B of this chapter (relating to Permit Requirements). An application for a general permit shall include all information necessary to determine qualification for, and to assure compliance with, the general permit.

(e) If the applicant satisfies the requirements of a timely and complete application, the applicant may operate under the application shield until such time as the Commission or its designee grants or denies the application for the general permit.

(f) The Commission or its designee shall grant a request for authorization to operate under a general permit to owners or operators of stationary sources that qualify. Such a grant shall not be a final action by the TNRCC, and therefore, is not subject to judicial review.

(g) The owner or operator of a stationary source shall be subject to enforcement action for operation without a permit if the stationary source, having been granted a general permit, is later determined not to qualify for the conditions and terms of the general permit.

(h) General permits shall not be authorized for affected units under the acid rain program.

(i) The Commission may revise or repeal any general permit on the General Permit List pursuant to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6253-13a). Subsequent to such action, and if the grantee's authority to operate under a general permit is affected by such action, the grantee of the revised or repealed permit shall apply for a federal operating permit. If the grantee's authority to operate under a general permit is affected by such action and the grantee wishes to retain authority to operate under a general permit, the grantee shall:

(1) apply by the date specified by the new or revised general permit, but no later than 12 months after the effective date of the new general permit;

(2) prior to applying for the new or revised general permit, continue to comply with the terms and conditions of its existing general permit; and

(3) subsequent to applying for the new or revised general permit, comply with the terms and conditions of the new general permit, rather than the terms and conditions of the existing permit.

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Effective September 20, 1993

**§122.204. Temporary Sources.**

(a) A temporary source is a stationary source which changes location to another site at least once during any five-year period.

(b) Any temporary source which satisfies the criteria of §122.120 of this title (relating to Applicability) shall apply to the Texas Natural Resource Conservation Commission (TNRCC or Commission) for a federal operating permit consistent with this chapter.

(c) Each temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter, nor does this addition of a temporary source trigger the requirement to revise the existing permit at the site. Each temporary source shall maintain records of duration of its stay at a site.

(d) Applications by temporary sources shall include all information required under Subchapter B of this chapter (relating to Permit Requirements).

(e) The Commission or its designee may issue a single permit authorizing emissions from similar operations by the same temporary source at multiple temporary locations. Any permit issued to a temporary source shall meet all requirements under this chapter for issuance of a federal operating permit.

(f) The owner or operator of a temporary source, permitted under this chapter, shall notify the TNRCC at least ten days in advance of each change in location, unless the Commission or its designee allows for a shorter notice due to an emergency.

(g) No affected units under the acid rain program shall be permitted as a temporary source.

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## **PERMIT REVISIONS**

### **§122.210. Applicability.**

(a) Except as provided in §122.221 of this title (relating to Operational Flexibility), the permittee shall submit an application to the Texas Natural Resource Conservation Commission for a revision to a federal operating permit under the requirements of this subchapter for those changes or activities which affect or add one or more applicable requirements on any relevant emission unit.

(b) Changes which qualify under §122.211 of this title (relating to Administrative Permit Amendments) shall follow the procedural requirements in §122.212 of this title (relating to Administrative Permit Amendment Application) and §122.213 of this title (relating to Administrative Permit Amendment Procedures).

(c) All other changes or activities at the site are not subject to the requirements of this chapter.

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### **§122.211. Administrative Permit Amendments.**

A change at a site may qualify as an administrative permit amendment if the change:

- (1) corrects typographical errors;
- (2) identifies a change in the name, address, or phone number of any person identified in the permit, e.g., responsible official, or provides a similar minor administrative change at the site;
- (3) requires more frequent monitoring or reporting by the permittee;
- (4) allows for a change in ownership or operational control of a site where the Texas Natural Resource Conservation Commission (TNRCC) determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the TNRCC; and
- (5) is similar to those in paragraphs (1)-(4) of this section.

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### **§122.212. Administrative Permit Amendment Application.**

Applications for changes that qualify under this section shall be submitted by the permittee no later than 90 days after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For

New Construction or Modification) or 90 days after the change prompting the administrative amendment request.

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**§122.213. Administrative Permit Amendment Procedures.**

(a) The Texas Natural Resource Conservation Commission (TNRCC or Commission) or its designee may make an administrative permit amendment for those changes at a site that qualify as an amendment under §122.211 of this title (relating to Administrative Permit Amendments).

(b) An administrative permit amendment shall be made by the Commission or designee consistent with the following conditions:

(1) the owner or operator of the site has submitted an application for the amendment which includes a description of the proposed change and also includes a statement that the proposed change meets the criteria for the use of the permit amendment procedures;

(2) the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(c) The TNRCC shall take no more than 60 days from receipt of an application for an administrative permit amendment to take final action on such application.

(d) The owner or operator may implement the changes addressed in the application for an administrative permit amendment immediately upon receipt by the TNRCC of the application, if the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title. If no preconstruction authorization is required for the change, then the change may be implemented upon filing the application for an administrative permit amendment.

(e) The site shall be subject to enforcement action if the change at the site is later determined not to qualify for an administrative permit amendment.

(f) The TNRCC shall submit a copy of the revised permit to the United States Environmental Protection Agency.

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**§122.215. Permit Additions.**

(a) A change at a site may qualify as a permit addition if the change satisfies all of the requirements of either subsection (b) or subsection (c) of this section.

(b) The change at the site:

- (1) is not addressed or prohibited by the federal operating permit;
  - (2) does not violate any existing term or condition of the federal operating permit;
  - (3) does not violate any applicable requirement; and
  - (4) is not a Title I modification, or otherwise required by the Texas Natural Resource Conservation Commission (TNRCC) to be processed as a significant modification.
- (c) The change at the site:
- (1) does not violate any applicable requirement;
  - (2) does not involve removal of monitoring, recordkeeping, or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to federal New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants;
  - (3) does not require or change a determination of an emission limitation under Federal Clean Air Act (the Act), §112(g) or §112(j) of Title I, or a source-specific determination for temporary sources of ambient impacts, visibility analysis, or increment analysis; and
  - (4) does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the site has assumed to avoid an applicable requirement to which the site would otherwise be subject. Such terms and conditions include:
    - (A) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
    - (B) an alternative emissions limit approved pursuant to regulations promulgated under the Act, §112(i)(5); and
  - (5) is not a Title I modification, or otherwise required by the TNRCC to be processed as a significant modification.

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**§122.216. Application for Permit Addition.**

- (a) The permittee shall submit to the Texas Natural Resource Conservation Commission (TNRCC) an application requesting a permit addition that meets the requirements of §122.215 of this title (relating to Permit Additions) and shall include the following:
- (1) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(2) the permittee's suggested draft permit conditions; and

(3) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of the permit addition procedures and a request that such procedures be used.

(b) Applications for changes that qualify under this section shall be submitted to the TNRCC by the permittee no later than 90 days after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

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**§122.217. Permit Addition Procedures.**

(a) The Texas Natural Resource Conservation Commission (TNRCC or Commission) shall notify the United States Environmental Protection Agency (EPA) and any affected state(s) of the requested permit addition.

(b) Within 90 days of the TNRCC's receipt of a complete application under §122.216 of this title (relating to Application for Permit Addition), or subsequent to the permittee obtaining or qualifying for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification), whichever is later, the TNRCC shall:

(1) determine that the requested change does not meet the permit addition criteria in §122.215 of this title (relating to Permit Additions) and whether the requested change should be reviewed under the significant permit modification procedures; or

(2) revise the draft permit addition and transmit to EPA the proposed permit addition as required by Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition).

(c) The Commission or its designee may issue a permit addition for those changes at a site that qualify as an addition under §122.215 of this title. The owner or operator may make the requested change prior to approval of the permit addition provided that the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title for the requested changes.

(d) The permit addition shall not become final until after EPA's 45-day review period at renewal of the permit or until EPA has notified the TNRCC that EPA will not object to issuance of the permit addition, whichever is first.

(e) Until final, the permit addition shall be a state only requirement of the federal operating permit.



(f) Prior to the issuance or denial of a permit addition by the board or its designee, the owner or operator of the relevant emission units affected by the change shall comply with the proposed permit terms and conditions. During this time period, the owner or operator need not comply with the existing permit terms and conditions that the application seeks to modify. However, if the owner or operator of the relevant emission units affected by the change fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the application seeks to modify shall be the enforceable terms and conditions.

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**§122.219. Significant Permit Modifications.**

(a) A change at a site may qualify as a significant permit modification only if the change satisfies one or more of the following:

(1) is a Title I modification;

(2) does not qualify as a permit addition, as an administrative amendment, or for operational flexibility;

(3) is a removal of existing monitoring terms and conditions, or a substitution in those terms and conditions promulgated pursuant to federal New Source Performance Standards (NSPS), or National Emissions Standards for Hazardous Air Pollutants (NESHAP); or

(4) is a removal of recordkeeping or reporting terms and conditions, or a substitution in a recordkeeping or reporting requirement promulgated pursuant to NSPS or NESHAP.

(b) Applications for changes that qualify under this section shall be submitted by the permittee no later than 12 months after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) for the change.

(c) For changes that qualify as Title I modifications and where the existing federal operating permit prohibits such change, the permittee shall obtain the significant permit modification before commencing any operation.

(d) Except as required in subsection (c) of this section, those changes that qualify as significant permit modifications may commence operation of any corresponding change immediately after obtaining or qualifying for any preconstruction authorization required under Chapter 116 of this title.

(e) Except as provided in subsection (c) of this section, prior to the issuance or denial of a significant permit modification by the Texas Natural Resource Conservation Commission or its designee, the owner or operator of the relevant emission units affected by the change shall comply with the proposed permit terms and conditions. During this time period, the owner or operator need not comply with the existing permit terms and conditions that the application seeks to modify. However, if the owner or operator of the relevant emission units affected by the change fails to comply with the

proposed permit terms and conditions during this time period, the existing permit terms and conditions that the application seeks to modify shall be the enforceable terms and conditions.

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**§122.220. Significant Permit Modification Application and Procedures.**

The Texas Natural Resource Conservation Commission (TNRCC or Commission) or its designee may issue a significant permit modification only for those changes at a site that qualify as a significant modification and meet the following conditions:

- (1) the TNRCC has received a complete application;
- (2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter (relating to Permit Requirements);
- (3) the requirements for notifying and responding to affected States under Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition);
- (4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and
- (5) the United States Environmental Protection Agency has received a copy of the proposed permit, any notices required, and has not objected to issuance of the significant permit modification within the time period specified in Subchapter D of this chapter.

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**§122.221. Operational Flexibility.**

(a) A permittee may make changes within a permitted site without applying for or obtaining a permit revision provided that the following conditions are met:

- (1) the changes are not Title I modifications;
- (2) the changes do not exceed the emissions limitation under the permit; and
- (3) the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(b) For changes to the federal operating permit which qualify under this section, the permittee shall provide the United States Environmental Protection Agency (EPA) and the Texas Natural Resource Conservation Commission (TNRCC or Commission) with written notification. The written notification shall be received by the TNRCC at least 30 days in advance of operation of the proposed

changes unless the Commission or its designee approves a shorter period, but in no case shall that period be less than seven days prior to the proposed change.

(c) Written notification shall include the following information:

(1) a description of the change, the date on which the operation resulting from the change is proposed to occur, the emissions resulting from the change, any new applicable requirements that will apply if the change occurs, and any permit term or condition that is no longer applicable as a result of the change;

(2) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of operational flexibility under this section and a request that such procedures be used.

(d) The permittee, TNRCC, and EPA shall attach each such notice to their copy of the relevant permit.

(e) Changes that qualify under this section are not subject to the procedural requirements for permit revisions.

(f) Upon satisfying the requirements of this section, the permittee may begin operations which result from the proposed change at the expiration of the time period provided for in subsection (b) of this section.

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## **PERMIT REOPENINGS**

### **§122.231. Permit Reopenings.**

(a) A permit shall be opened and revised for cause only under one or more of the following circumstances:

(1) additional applicable requirements become applicable to a permitted site which, at the date of promulgation of the additional requirement, has three or more years remaining prior to expiration, except that no such reopening is required if the new requirement is incorporated in any federal operating permit which addresses the emission unit(s) subject to the new requirement;

(2) additional requirements become applicable to an affected unit under the acid rain program;

(3) the federal operating permit contains a material mistake or if inaccurate statements were made in establishing the emissions standards or other terms and conditions of the federal operating permit; or

(4) a determination is made by the Texas Natural Resource Conservation Commission (Commission) that the permit shall be revised or revoked to assure compliance with the applicable requirements.

(b) The Commission or its designee shall terminate, revise, or revoke and reissue a federal operating permit for cause.

(c) After receipt of a petition for reopening for cause, as defined in this section, the Commission or its designee may terminate, revise, or revoke and reissue the permit.

(d) No later than 180 days of receipt of written notification by the United States Environmental Protection Agency (EPA) that cause, as defined in this section, exists to terminate, revise, or revoke and reissue a permit pursuant to this section, the Commission or its designee shall terminate, revise, or revoke and reissue the permit in accordance with EPA's direction.

(e) No reopening is required under subsection (a) of this section, if the effective date of the requirement is later than the permit expiration date.

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### **§122.233. Permit Reopening Procedures.**

(a) Reopenings and revisions under §122.231 of this title (relating to Permit Reopenings) shall comply with the requirements of this chapter for permit issuance, including such requirements for application, public participation, review by affected states, and review by the United States

Environmental Protection Agency. These procedures shall affect only those parts of the permit for which cause, as defined in §122.231 of this title, to reopen exists.

(b) For reopenings and revisions under §122.231 of this title, the Texas Natural Resource Conservation Commission (TNRCC) shall provide 30 day's notice of intent to reopen, unless the board or its designee allows for a shorter notice due to an emergency.

(c) Reopenings and revisions under §122.231(a)(1) and (2) of this title shall be completed by the TNRCC not later than 18 months after promulgation of the applicable requirement.

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## **PERMIT RENEWALS**

### **§122.241. Permit Renewals.**

(a) Each federal operating permit issued or renewed by the Texas Natural Resource Conservation Commission (TNRCC or Commission) shall be subject to review at least every five years after the date of issuance of the proposed permit to determine whether the authority to operate should be renewed.

(b) The TNRCC shall provide written notice to the permittee that the permit is scheduled for review. Such notice will be provided by certified or registered United States mail no less than 12 months prior to the expiration of the permit. The notice shall specify the procedure for filing an application. In order to qualify as a timely application, the application shall be filed by the permittee with the TNRCC at least six months, but no earlier than 18 months, prior to the date of permit expiration. The application shield is not available to sites that do not submit a timely and complete application. Failure to receive notice as described in this subsection does not affect the applicability of the application shield or the lack thereof, as determined pursuant to Subchapter B of this chapter (relating to Permit Requirements).

(c) A federal operating permit may be renewed by the Commission or its designee only if all of the following conditions have been met:

(1) the TNRCC has received a complete application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter;

(3) the requirements for notifying and responding to affected states under Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition);

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) The United States Environmental Protection Agency has received a copy of the proposed permit, any notices required, and has not objected to issuance of the proposed federal operating permit within the time period specified in Subchapter D of this chapter.

(d) In determining whether and under what conditions a permit should be renewed, the Commission shall consider:

(1) all applicable requirements as defined in Subchapter A of this chapter (relating to Definitions); and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(e) The Commission may not impose requirements less stringent than those of the existing permit unless the Commission determines that the proposed changes will meet the requirements of this chapter.

(f) At the time of renewal, the Commission or its designee may combine into a single permit, any federal operating permits, including general permits, at the same site which have satisfied the requirements of this section.

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**§122.243. Permit Expiration.**

Permit expiration terminates the site's right to operate unless a timely and complete renewal application has been submitted consistent with §122.133 of this title (relating to Timely Application) and §122.134 of this title (relating to Complete Application). Subsequent to a timely and complete application submittal, the site may continue to operate under the terms and conditions of the permit until the Texas Natural Resource Conservation Commission or its designee has taken final action on the permit renewal application.

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